IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

CRP.No. 2452 of 1999(H)

SM.1/1987 of TALUK LAND BOARD, ALATHUR
.....

REVN. PETITIONER/ASSESSEE

P.C. NARAYANAN, S/O LATE CHAMI ALIAS,
CHAMIYAR, PARAKKAL HOUSE, VALLIKODE,
DESOM, KOTTAYI, ALAHUR TALUK.

BY ADV. SRI.P.R.NAMBIAR

RESPONDENTS:
----

1. **THE TALUK LAND BOARD, ALATHUR.**

2. **THE TAHSILDAR, ALATHUR.**

3. **THE STATE OF KERALA, REP.**
BY THE CHIEF SECRETARY TO THE
GOVT. OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 TO R3 BY GOVERNMENT PLEADER SRI. M.R. SABU.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

C.R.P. NO. 2452 OF 1999

= = = = = = = = = = = = = = =

Dated this the 14th day of March, 2007.

O R D E R

This revision is preferred against the order of the Taluk Land Board, Alathur in S.M.1/87. The case had a very long career. Initially, a ceiling case was initiated by one Chami @ Chamier and there was a partition deed entered into between him and his sons prior to the crucial date of 5.11.74 and therefore it was construed as a gift deed and the benefits were given to the parties therein. One of his sons namely Narayanan is the person who is the petitioner before this Court as well as before the Land Board. As per the partition deed he was given 8.72 acres of land and as he was an unmarried person he was only entitled to hold 6 acres of land besides the exempted land. It was raised before the Taluk Land Board that an area of 90 cents in Sy.No.41/9 was used by him as a Kattakkalam(thrashing field) and that the family had only limited right over 1.04 acres of land in Sy.No.41/2 and 41/5. The Taluk Land Board in the light of the decision of the Supreme Court and if this Court came to a conclusion that the family had only half

right over 1.04 acres which if divided will be 1/6 for an individual and therefore only had taken into consideration 17 cents of land for fixing the ceiling area of Narayanan. So far as the Kattakkalam is concerned there is nothing to show that there was any construction therein which will come under the purview of Section 81 (1)(m) for the reason that it is neither a house site nor a site occupied by the dwelling houses, lands, wells, tanks and other structures and therefore denied exemption. So, after recalculating the total extent of the property as 7.85 acres, the Taluk Land Board directed the declarant to surrender 1.60 acres of land. It is against that decision the present revision is preferred.

2. A perusal of the memorandum of revision would show that it is contended by the revision petitioner, that Chamier died only on 4.11.75. The right devolves on the heirs of Chamiar and secondly as the revision petitioner has got married prior to 5.11.75 it has to be construed as a family and that the denial of exemption of Kattakkalam was not proper and he should have been given an option to surrender the extent. So far as the first two contentions are concerned the land Board had taken into consideration the partition as a gift deed and also had only taken into account the land allotted to Narayanan under the partition

deed for the purpose of computing the ceiling area. In the light of the finding of the Supreme Court it also held that he had only a fractional right and therefore deducted 87 cents from 1 acre and 4 cents of land in Sy.No.41/1/-5. As far as the ceiling law is concerned the ceiling status of a person has to be reckoned as on 1.11.70. As Mr. Narayanan was only an adult unmarried person he is only entitled to hold six acres and his subsequent factum of marriage will not improve the situation. So far as the Kattakkalam is concerned no acceptable evidence is tendered before the Land Board to show that it will attract any of the provisions or ingredients enunciated u/s 81(1)(m) of Kerala Land Reforms Act. Therefore, the Land Board was right in rejecting that contention also. But, it has to be stated that he has not been given any option to surrender the land. Therefore, in the fitness of things and in the interest of justice an opportunity has to be given to him to give an option to surrender and the Land Board has to consider the same in accordance with law. Therefore, the C.R.P. is disposed of as follows:

3. The challenge against the order of the Taluk Land Board is dismissed. But, the revision petitioner is given an opportunity to exercise his option regarding the surrender of land

and Taluk Land Board shall dispose of the matter regarding the option after hearing the revision petitioner.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-

M.N. KRISHNAN, J.

= = = = = = = = = = =

C.R.P. NO. 2452 OF 1999

= = = = = = = = = = = =

J U D G M E N T

14th March, 2007.